



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

CHAN

December 17, 2012

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Robert Vanness**  
Tax Registry No. 916835  
71 Precinct  
Disciplinary Case No. 2010-2245

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on March 14, 2012 and was charged with the following:

**DISCIPLINARY CASE NO. 2010-2245**

1. Said Police Officer Robert Vanness, while assigned to the 71<sup>st</sup> Precinct, while off-duty, on or about May 14, 2010, in New York County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: after Person A, a civilian, rode his bicycle in front of Police Officer Robert Vanness' personal vehicle while traveling on 7<sup>th</sup> Avenue nearly striking Police Officer Robert Vanness' vehicle, said Police Officer then sped his vehicle up and cut in front of Person A's bicycle forcing him onto the sidewalk.

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT – PROHIBITED  
CONDUCT GENERAL REGULATIONS  
VEHICLE AND TRAFFIC LAW SECTION 1212**

2. Said Police Officer Robert Vanness, while assigned to the 71<sup>st</sup> Precinct, while off-duty, on or about May 14, 2010, in New York County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer Robert Vanness, having being directed by Sergeant Michael Barry, of the Port Authority Police Department, to remain inside his vehicle and provided New York Police Department identification, wrongfully did fail to remain in said vehicle and failed to provide identification and neglected to comply with said directions from said Port Authority Police Officer.

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT – PROHIBITED  
CONDUCT GENERAL REGULATIONS**

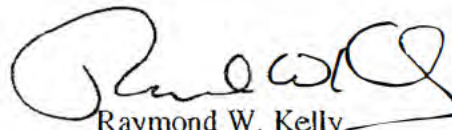
**POLICE OFFICER ROBERT VANNESS DISCIPLINARY CASE NO. 2010-2245**

3. Said Police Officer Robert Vanness, while assigned to the 71<sup>st</sup> Precinct, while off-duty, on or about May 14, 2010, in New York County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Police Officer engaged in a verbal dispute with Person A after being involved in a traffic incident.

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT – PROHIBITED  
CONDUCT GENERAL REGULATIONS**

In a Memorandum dated April 19, 2012, Deputy Commissioner Martin G. Karopkin found Respondent Vanness Not Guilty of Specification No. 1, Guilty In Part of Specification No. 2, and Specification No. 3 was Dismissed, in Disciplinary Case No. 2010-2245. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty. No disciplinary action will be taken against Respondent Vanness regarding this matter.



Raymond W. Kelly  
Police Commissioner





POLICE DEPARTMENT

April 19, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Robert Vanness  
Tax Registry No. 916835  
71 Precinct  
Disciplinary Case No. 2010-2245  
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The above-named member of the Department appeared before me on March 14, 2012 and on March 29, 2012, charged with the following:

1. Said Police Officer Robert Vanness, while assigned to the 71<sup>st</sup> Precinct, while off-duty, on or about May 14, 2010, in New York County, did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit: after Person A, a civilian, rode his bicycle in front of Police Officer Robert Vanness' personal vehicle while traveling on 7<sup>th</sup> Avenue nearly striking Police Officer Robert Vanness' vehicle, said Police Officer then sped his vehicle up and cut in front of Person A's bicycle forcing him onto the sidewalk.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED  
CONDUCT GENERAL REGULATIONS  
VEHICLE AND TRAFFIC LAW SECTION  
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2. Said Police Officer Robert Vanness, while assigned to the 71<sup>st</sup> Precinct, while off-duty, on or about May 14, 2010, in New York County, did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, in that said Police Officer Robert Vanness, having being directed by Sergeant Michael Barry, of the Port Authority Police Department, to remain inside his vehicle and provided New York Police Department identification, wrongfully did fail to remain in said vehicle and fail to provided identification and neglected to comply with said directions from said Port Authority Police Officer.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED  
CONDUCT GENERAL REGULATIONS

3. Said Police Officer Robert Vanness, while assigned to the 71<sup>st</sup> Precinct, while off-duty, on or about May 14, 2010, in New York County, did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit: said Police Officer engaged in a verbal dispute with Person Aafter being involved in a traffic incident.

P.G. 203-10, Page 1, Paragraph 5    PUBLIC CONTACT-PROHIBITED  
CONDUCT GENERAL REGULATIONS

The Department was represented by Javier Seymour, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

#### DECISION

Respondent is found Not Guilty of Specification No. 1 and Guilty in Part of Specification No. 2. It is recommended that Specification No. 3 be dismissed.

#### SUMMARY OF EVIDENCE PRESENTED

##### The Department's Case

The Department called Michael Patrick Barry.

##### Michael Patrick Barry

Barry is a sergeant with the Port Authority Police Department (PAPD). He has been a member of PAPD for 27 years and has performed various patrol functions. He has

been a supervisor since 2008 and is currently a supervisor at PATH [the Port Authority Trans-Hudson train system] and periodically does counterterrorism initiatives.

On May 14, 2010, Barry was working in uniform and had a marked vehicle. He started his tour by doing bag checks at 33 Street and Sixth Avenue and was on his way to the World Trade Center, at about 6:45 p.m. when he observed a maroon colored BMW heading south on Seventh Avenue at a high rate of speed. He estimated the speed as "at least 45 and upwards of 50." He said he believed the posted speed limit was 25 miles per hour.

Barry saw the vehicle go ahead of him and then come to an abrupt halt. Initially, he thought the car was going into a parking space but that was not the case. It appeared to him that the BMW's driver was trying to "ram a gentleman on a bicycle." He testified that the BMW was about two car lengths in front of him at that time.

Barry described what occurred after that:

Well, the bicyclist was clearly agitated, and he managed to get in front of the BMW. And the BMW, at that point, had come to almost a full stop. He managed to get in front of the BMW, and then to pedal at a rapid pace further south on Seventh Avenue. The driver of the BMW accelerated rapidly and did exactly the same thing again about two or three blocks further south around 17 Street...The bicyclist was motioning for the driver of the BMW to get away from him and the driver of the BMW was trying to cut in front of him.

Barry stated that he was now in front of the BMW and through his side view mirror he could see the bicyclist waving the motorist away and coming in contact with the BMW's side view mirror. He saw the BMW's mirror dangling from its wires after



that. He said he then saw the BMW try to "ram" the bicycle into a bank of telephones and the bicyclist went "ever so slightly" up on the curb.

Barry said he was then in the vicinity of 14 Street and he put his car perpendicular to the oncoming BMW and put his overhead lights on to stop the car. Barry testified that the driver (later identified as Respondent) exited his vehicle and that the cyclist (later identified as Person A) was "abreast" of the driver's door. He said there was a heated exchange between them. Respondent motioned for Barry to approach, but Barry did not feel comfortable doing that. Barry made a transmission on his police radio advising that he was on a car stop and did not know if he completed the transmission as Respondent started to approach him. As Respondent did so, Barry noted that Respondent was armed because he could see a bulge on his hip. Barry stated:

I was very uncomfortable having a rather large guy coming at me not knowing what this is about with what's clearly a handgun. I unclipped my holster and I put my hand on my service weapon...I said stop right where you are. Stop. He reached into his back pocket and he showed me his identification, very quickly, and closed it back up again.

Barry said it appeared that Respondent had a silver shield and an identification card with a red background behind the photograph, but he said he could not tell what department he was from. He said Respondent and Person A were arguing and he stepped in between them. He also called for backup. Explaining why he called for backup, Barry stated, "I have a guy with a handgun that may or may not be a police officer. I didn't get an opportunity to inspect his credentials. And the conduct I was seeing was totally inconsistent with what I would expect from a police officer that's experienced."

Barry said he told Respondent on numerous occasions to get back in his car and that Respondent would not do it and continued arguing with Person A. He said he told him to "sit down and shut up." Respondent finally got in his car, Barry said, when Respondent's wife told him to do so. Barry stated that that worked "for a little while."

Barry testified that he then went over to Person A and told him to step away from the BMW. Person A told him that he had inadvertently cut off Respondent and that Respondent started chasing him down and trying ram him. Person A, he said, told him that Respondent had "freaked out" and had gone after him. Person A said that he did not need any medical help, that he did not want to make a complaint and that he just wanted to leave.

When Barry's backup arrived, he spoke with Respondent, who told him that Person A had cut him off and spit at him, and had broken his mirror. Respondent wanted to press a complaint and have Person A arrested.

Barry said that when he heard that Respondent wanted Person A arrested, he tried to explain to Respondent that he, Respondent, had been the aggressor. He said he had seen the incident with the damaged mirror in his own mirror and there was no intent to damage Respondent's mirror. Barry described the scene:

He listened to me but he was still pretty angry. He said he wanted this guy arrested. I explained at that point no arrest is going to be effected as far as I'm concerned. There's no need for it. I said, quite honestly, you have a lot to lose here. You have to calm down and think about this. You obviously have time on the job. At that point, he interrupted me and said he wanted a New York City [Police Department] sergeant there...I tried to explain to him to think about that. I don't know that you want to do that. Because if you do, right now this is ameliorated. It's worked out, no one wants to press any complaints, at least the bicyclist who clearly was in a position where he could



press if he wanted to. He didn't want to press. I said, it seems to me, from my vantage point, the guy didn't purposely come in contact with your mirror, it was your actions that led to that. So if he doesn't want to press and you don't want to press, we can walk away from this.

Barry said that Respondent, after to speaking to his wife, decided not to press charges. He said he instructed two of his officers to memorialize the incident and told Respondent to show them his identification. He told his officers to get Respondent's name, tax number, precinct, information about his car and make a synopsis. He said he did this in case "IAD" or the Civilian Complaint Review Board or someone from PAPD asked about the incident.

Barry said he then resumed his journey to the World Trade Center. He got about half a block when one of his officers called him back to the scene. He went around the block and returned to 14 Street and Seventh Avenue, where he was then told by his officers that Respondent refused to provide his identification or shield and that Respondent wanted an NYPD sergeant on the scene. Barry testified that he then demanded the shield and ID from Respondent, who refused and instead demanded an NYPD sergeant. Barry stated:

Finally, I said, okay, if that's what you want, but just let me advise you that before this happens, if I call a city sergeant, he is going to call a lieutenant, he is going to bump it up. That lieutenant is going to call the duty captain. That duty captain is going to call IAB, and you are not going to like what happens...[Respondent] hesitated for a moment, and said I want a New York City sergeant. Immediately after that, I called my communicator, I asked them to notify the 13<sup>th</sup> [Precinct] and I needed a sergeant at this location. [Respondent] got on his phone and he called 911.



Barry said he heard Respondent speak to the 911 operator and identify himself as a member of the service. Barry said that when an NYPD sergeant responded, Respondent tried to speak with him but the sergeant declined, speaking instead to Barry. He explained the situation to the NYPD sergeant, who told him that he would "bump this up" and send everyone to the stationhouse. Barry said when he left the scene he still did not know who Respondent was. Later in the evening, Barry was called to the precinct where he met with representatives of the Internal Affairs Bureau (IAB) and gave a statement. He also made a memo book entry [Department's Exhibit (DX) 1] regarding the incident.

Barry expressed his admiration for the NYPD and said he did not want to be involved in a situation that would create antipathy between "the NYPD and us." He stated, "I didn't look forward to this at all. If I could have [de]fused it and had everyone go away that day happy, that was my goal."

On cross examination, Barry agreed that he wanted to defuse the situation and not bring it into the stationhouse or to the attention of NYPD. He did not believe, however, that if he had not asked Respondent for his name, tax and shield numbers, that would have occurred. He said that when he left the scene the first time, he was confident that Respondent would provide that information.

Barry has never worked for NYPD. He agreed that other PAPD officers who responded had been former NYPD members. Barry stated that he is aware that if an NYPD officer is involved in an off-duty incident, a sergeant has to respond but he did not believe it had to be an NYPD sergeant. He did not plan on notifying IAB or NYPD.

Barry denied knowing that Respondent was an NYPD officer. He stated that Respondent could have been from "Metro[-] North" or "New Jersey Transit." Barry stated, "I had no idea that he was a New York City police officer."

When Barry first made his observations, Respondent's vehicle was abreast of his as he travelled south on Seventh Avenue, on his left. Barry's speed was 30 to 33 miles per hour. He believed the speed limit was 25 miles per hour but did not check the posted speed limit on Seventh Avenue. Barry said that he lives in New Jersey and the speed limit there is 25 miles per hour. He agreed that, when he first saw Respondent, there was no misconduct. He said Respondent "hit the gas hard and sped up rapidly." He said he first saw Person A when Respondent sped up rapidly, "just before he cut in front of the bike rider." Barry said Person A was travelling within a few feet of the parked cars.

Barry said he never saw Person A on the passenger side of Respondent's vehicle. He acknowledged that he had been told that Person A had spit on Respondent's vehicle. Barry denied ever losing sight of Respondent's vehicle, noting that if Person A had spit on the passenger side of Respondent's vehicle, it might have happened before he saw them. He said it appeared to him Respondent was trying to run Person A into the parked vehicles. Barry said that Person A was trying to shoo away Respondent with his arm when it came into contact with the mirror. He stated, "I know what I saw. He was trying -- the bike [rider] was motioning for the BMW operator to get away from him and that's when they made contact." Barry described it as a "glancing blow." He then saw the hard part of the driver's side mirror was hanging below the mount. He did not see the cover dislodge from the mirror.



Barry asserted that he did not see Person A hit any parked cars, nor did he see Respondent's vehicle come into contact with Person A. He said that he was about two car lengths in front of Respondent's vehicle when he saw the "glancing blow" to Respondent's side view mirror through his own side view mirror and by turning his head. It was after that that he blocked traffic with his car.

Barry agreed that Person A told him that he had accidentally cut off Respondent but that Barry had not seen that part of the incident. He said Respondent was "pretty hot" at Person A. He agreed that Person A was "pretty hot too." He agreed that they both had a verbal argument when they were stopped. Describing his intention at the time of the stop, Barry said, "My intention was to find out what happened. I still don't know."

Barry agreed that, when he saw the bulge in Respondent's clothing, he was concerned for his safety: A car stop can be a dangerous situation. He agreed that he did not make any notation in his memo book about the bulge. Barry said there was no need to put it in his memo book but that it was mentioned in a report he had prepared. He stated that he did not have the report with him and asserted that he never turned that report over to the Advocate because the Advocate never asked for it. Barry pointed out that the only subpoena he had received was for him to appear and that he had not received a subpoena duces tecum.

Barry agreed that Person A was candid in telling him that he had cut off Respondent and that he had spit at Respondent's vehicle. Barry agreed he knew Respondent was a police officer but said he did not know what department he was with. He was present when Respondent's side view mirror was popped back into place and agreed that it looked like new.

Barry said that he had wanted Respondent to stop arguing with Person A and get back into his car. He agreed that Person A was yelling at Respondent's wife. He said that he was between Person A and Respondent's wife. Barry said that Respondent got back out of his car after he had been told to stay there. Barry had called for backup prior to the time Respondent's wife got out of the car.

Barry stated that after his officers arrived, "it took quite a while for us to calm this down. This didn't happen immediately." Barry stated that when he left he was satisfied that the matter had been worked out.

Barry did not hear one of his officers ask for an NYPD response on his police radio. He said they called for his response. He said that he was still on Seventh Avenue, about half a block away and he had to go around the whole four blocks to return to the scene. He thought maybe something else had happened or it had erupted again and that he was not sure why he was being called back. He agreed that, when he returned, the first thing he said was that he thought this had been worked out. Respondent told Barry that he wanted an NYPD sergeant. Barry called for an NYPD sergeant at essentially the same time Respondent called 911. Barry agreed that he told Respondent he might regret the call. Barry stated, "I said to him I thought this was worked out. He wanted a New York City sergeant. I said, fine, if that's what you want. I explained everything to you before how this might go, and it wasn't going to be good. And at that point, he called 911."

Barry believed both Respondent and Person A had wanted the matter "worked out" and that neither wanted to make a complaint. Barry asked his officers to record Respondent's information and Respondent refused to provide that.



[Sgt. Dovico of the Brooklyn South Investigations Unit interviewed Person A and prepared an Investigating Officers Report (DX 2), dated June 10, 2010, noting that Person A stated that he and Respondent were traveling southbound on Seventh Avenue. Between 27 Street and 14 Street, Respondent was trying to maneuver around Person A's bicycle several times and honking his horn at him. At one point, Person A spit on Respondent's car. At another point, Respondent unexpectedly turned his car towards Person A, causing Person A to swerve around the car. At around 15 Street, Respondent cut him off again, whereupon Person A put his hand out and the side view mirror "popped off the car." They were stopped by an officer at 14 Street. Respondent and Person A exchanged words while the officer was trying to calm everything down. Respondent was able to reattach his side view mirror.]

#### Respondent's Case

Respondent called Angela Morgan Vanness and Respondent testified in his own behalf.

#### Angela Morgan Vanness

Angela is Respondent's wife. At about 6:30 p.m. on May 14, 2010, she was riding in a BMW being driven by Respondent. Also present was her sister and her granddaughter. She was in the front passenger seat as they headed southbound on Seventh Avenue. She noticed a bicyclist [Person A] "in the middle of the street...At one point, he was next to our vehicle." Respondent honked the horn to warn Person A he was "coming too close" to the car.

She said that “we thought he went away. Then we saw him again, you know, like several times we had to avoid him. And at one point he spit at the car,” specifically on the rear passenger side of the car. She heard her sister and granddaughter, who were sitting in the rear seat say that he had spit at the car. They decided to forget about it, however, “[h]e kept just coming at the car.”

She said they were trying to avoid Person A and moved over to the left lane when “the next thing I knew, he swerved in front and he was on the driver’s side. And the next thing I saw was his hand hitting the [side view] mirror and you just heard the mirror flew off.” Angela stated that this was an intentional act. After Person A hit the mirror, he looked back and tried to get away. He tried to get up on the curb but it was too high and Angela saw him trip but not fall down. At that point, Respondent stopped the car.

The next thing Angela saw was Barry approaching. She saw Respondent reach into his left pocket and show his identification to the sergeant in a manner that she has seen him use before. She did not actually see the ID. Person A was cursing and swearing. She heard Barry yell at Respondent, telling him to go in the car and sit down. At that point, she got out of the car so she could explain what had happened when Person A started cursing at her “[a]nd the sergeant was standing there. He didn’t do anything about it.” She said her husband got out of the vehicle and politely told Person A not to curse at his wife. At that point, Barry yelled at Respondent saying, “[D]idn’t I tell you to sit down? Didn’t I tell you to shut up?”

Barry called for backup and four officers showed up. Angela stated that Respondent told one of the officers that he would like to notify NYPD. She said that Respondent was going to call 911 when an officer said he could get them on the radio.



Then she heard the sergeant on the radio. She said Barry, who had left the scene, told the officer not to do anything until he got back there.

Angela said that upon Barry's return, "all hell broke loose on his part." Barry started berating Respondent, saying, "[D]idn't I tell you, didn't I tell you if I speak to IAB, what IAB can do to you? If I go and talk to them, you know what will happen to you? Do you really, really want this? Do you really want this? Do you really want me to talk to them?" It sounded as though Barry were threatening her husband with "this IAB." Barry further told Respondent, "We can make this go away. You give me your ID, he said, so I can put some notes in my book. At that time, my husband looked at me and I looked at my husband, I said, something doesn't sound right. So my husband said, no. I want to call NYPD. So at that time my husband called NYPD. And then he just got really irate." She described Barry as a "pit bull" at this point in time.

An NYPD sergeant arrived, did not speak to them, made a telephone call and ordered them to the precinct. They were there for many hours. She was not interviewed.

Angela testified that she did not see Respondent speed at any point to cut off Person A and force him into parked cars. She stated that that would not have been possible as there was heavy rush hour traffic.

On cross-examination, Angela said the windows were not down as the air conditioning was on. She did not fear for her physical safety when Person A spit at the vehicle. She said prior to the incident, Respondent had been focused on a discussion in the car and they had been joking. She acknowledged that he was upset after the mirror was broken off the car, but not enraged. In relation to Person A, all Respondent said was, "[W]hat the fuck." She acknowledged that, after Barry saw Respondent's ID, he told him

to go to the car, sit down and shut up. Barry told Respondent to sit down once and then again when he went out to get the mirror. She also acknowledged that Respondent "stood up" when Person A started to curse at her and put his hands in her face but she said, "he never left the vehicle because the door was he was between himself and the door..." She said that he told Person A to stop cursing at her.

Angela testified that when Barry returned he asked for Respondent's ID and that Respondent did not turn over the ID because Barry wanted to quash the matter.

### Respondent

Respondent has been with the Department for 16 and a half years. He is currently a patrol officer in the 71 Precinct and has never previously been the subject of charges.

On May 14, 2010, he was driving his car south on Seventh Avenue in Manhattan. In the vehicle with him were his wife in the passenger seat, and his sister-in-law and his granddaughter were in the rear seat. There was a bicyclist [Person A] in front of them in the middle of the lane. He did not see Barry at that time. He honked his horn at Person A, expecting him to move either to the left or the right. Person A remained in the center of the lane. He honked again. Shortly after that, he moved to go around a double-parked vehicle when he saw Person A take a swipe and spit at his car. The spitting was at the rear of the vehicle.

Respondent testified that he was unaffected by the spitting as he did not know if it got on the car and, in any event, it was no big deal as it could easily be washed off. At this point Respondent believed the incident was over.



Subsequently, he stopped at a traffic light and Person A went on ahead. Respondent proceeded after the traffic light turned and again came upon Person A. As he approached the bicyclist, Person A looked up, said something, and deliberately punched the side view mirror, dislodging it. Respondent did not see Barry in the vicinity at this time. Person A tried to get away down Seventh Avenue and tried to get up on the sidewalk. As Person A tried to mount the curb, he stumbled and got off his bike. Respondent said he stopped his car, opened the door and said, "[W]hat the fuck." Respondent stated that his intention at that time was to effect an arrest of Person A for the damage he did to his vehicle.

Then, Respondent heard a screech. He looked over and saw a PAPD sergeant, Barry. Respondent said he was relieved because, as he put it, he would not have to "touch this guy" to effect an arrest. He motioned for Barry to come to him. He pulled him to the side, turning his back to people on the street, reached in his left pocket and pulled out his shield and ID card (Respondent demonstrated that these are kept side by side in a leather case).

At this point, Barry told him that he should have known better. Respondent was puzzled because he had just been the victim of a crime. Barry told him to go to his car and sit down. As he was headed to the car, he saw the cover to the mirror in the street further up the block. He told Barry he was going to get the cover before there was more damage to it and headed up the block. After retrieving the cover he sat down in the car.

Angela then said that, because Barry was not listening to Respondent, she would speak to him (Barry), and got out of the car. Respondent then noticed that Person A was arguing with her. Person A had his hands in her face and he was also cursing at her. Barry was standing in a different location, not bothering to intervene. He said that he stepped

out of the car onto the pavement. He remained in the open door area and told Person A to watch his hands and how he spoke to his wife. At that point, Barry turned around and told him to sit down and shut up. Respondent said he sat back down. When the other officers arrived, he asked if he could get out of his car and they agreed he could. He learned that some of the responding PAPD officers had been former NYPD members.

After Barry finished speaking with Person A, he came back to Respondent and told him he wanted to quash the matter. Respondent looked at the damage to his vehicle and decided to try to see if he could fix it. He was able to snap the parts back into place and everything seemed to be in working order.

Respondent testified that Barry then said he was going to let his officers handle it and left. After a brief conversation with those officers, they concluded that it really was not a matter within their jurisdiction and that it was a matter for the NYPD. They then went on the radio to call for an NYPD response. He then heard Barry's voice come over the radio telling them to stand by and not to do anything until he got back.

Respondent stated that when Barry returned he was "livid." He was pointing his hands in Respondent's face and Respondent said he backed off. He said Barry told him that he (Respondent) did not want Barry "talking to IAB about this." Respondent stated that Barry did not ask for his identification. He tried to explain to Barry that if he put his name in his memo book, he (Respondent) would have to notify NYPD. He said he told Barry that he could not just walk away from this and that he had to notify this Department. Barry told him that he did not want NYPD to respond and that he could handle this.



At that point, Respondent stepped back and called 911 on his cell phone. He also saw Barry make a notification via his radio but did not hear what he was saying. When the NYPD sergeant arrived, Respondent said he tried to tell him what occurred. The NYPD sergeant walked away and made a call on his cell phone, after which he said everyone had to go to the precinct. Respondent remained at the precinct until after midnight. His duty status was changed and he was placed on modified assignment until August 2, 2010, when he was restored to full duty.

Respondent testified that he did not see any damage to the bicycle nor was Person A injured. Respondent denied ever trying to run Person A into parked cars or onto the sidewalk. He denied failing to provide his identification to Barry and he denied failing to remain in the car.

On cross-examination, Respondent said the he was travelling at about 30 miles per hour down Seventh Avenue. He said he first spotted Person A at about 20 Street. He denied having a problem with the bicyclist being in front of him, but he honked because he was in the middle of the lane, blocking traffic. He said he honked to avoid hitting or startling him. Respondent acknowledged that his revolver was in a pancake holster on the back of his hip. He said that his window was slightly open.

Respondent acknowledged that there came a time when Person A came next to him and mumbled something. He could not determine exactly what Person A was saying but he "was not singing a song." He actually saw Person A spit at his vehicle and asserted that it did not irritate him but said he could not believe someone would do that. Respondent agreed that, when he stopped the vehicle, he got out and said, "[W]hat the fuck" to Person A. He knew Person A said something in response but did not recall what was said.



Respondent testified that he initially was relieved when he saw Barry because he would not have to “put his hands” on Person A, who he wanted to arrest. His initial conversation with Barry was not confrontational. Respondent said that he held his ID out for Barry for about 15 seconds. Respondent denied that Barry or anyone else asked him for his ID after that. Respondent said he did not raise his voice to Barry nor did he curse at him. Respondent acknowledged that after he was told to sit in his vehicle, he left it twice. One time it was because Person A had his hands in his wife’s face and he saw Barry] was not doing anything to intervene.

Respondent agreed that he felt it was his duty to report the matter to the NYPD.

#### FINDINGS AND ANALYSIS

There are several versions of the events in this case, one put forward by the Department which are found in the statement of Person A, who did not testify, and the testimony of Barry and two similar but yet different versions put forward by Respondent and his wife Angela. As is usually the case, it is best to start with the facts that are generally agreed to. These are that at about 6:30 p.m. on May 14, 2010, Respondent was travelling south on Seventh Avenue in Manhattan. He was in his brand new BMW with his wife, Angela, and other family members. Person A was also travelling south on Seventh Avenue on his bicycle. At some point, Respondent honked his horn at Person A acknowledged that he spit on Respondent’s vehicle. After that, the facts become much murkier.

Respondent claims that Person A intentionally broke the side view mirror on his car. Person A claims that it was not an intentional act. Barry, a sergeant with the Port Authority

Police Department, claims to have witnessed this and supports Person A's claim. Barry also claims that Respondent was driving at a high rate of speed and trying to force Person A into a bank of phone booths. While Respondent denies this, he acknowledges that, after his mirror was broken, he wanted to arrest Person A for criminal mischief.

Barry, who was in uniform and driving a marked PAPD car, blocked the lane of traffic forcing both Respondent and Person A to stop. It is uncontested that Respondent approached Barry, showing Barry his shield and ID. It is also uncontested that Barry ordered Respondent to stay in his vehicle. Respondent acknowledges that he exited the vehicle on two occasions, once to retrieve part of the mirror casing that was lying in the street and a second time because Person A was yelling at his wife and "in her face." It is also uncontested that Respondent was able to snap the mirror back into place and that in the end the car was not damaged.

These are the basic facts that are encompassed in the charges but events that occurred subsequent to that bear directly on why the charges were drawn in this case and, therefore, must be discussed.

After making the stop in the vicinity of Seventh Avenue and 14 Street, Barry called for backup by summoning other PAPD officers to the scene. After the backup officers arrived, Barry determined that no further police action need be taken. He said he directed his officers to write up a full report and he left the scene.

Shortly after he left, Barry returned to the scene. Barry said he was half a block away when he was summoned to return by his officers because Respondent was refusing to provide his identification. Respondent gave a different version of why Barry returned. Respondent stated that, at his request, the officers went on the police radio to ask their



dispatcher to summon NYPD officers to the scene. Both Respondent and his wife testified that they heard Barry, over the radio, directing his officers not to notify NYPD.

Interestingly enough, even on the issue of Barry's return, there is a dispute of fact. Barry said he drove around several blocks to return. Angela postulated that he drove north on Seventh Avenue because his car was facing in that direction on his return.

There is no doubt that, upon his return, Barry was annoyed. He acknowledges this. He also acknowledged that he told Respondent in no uncertain terms that, if NYPD was notified, IAB would become involved and, once he spoke to them, Respondent would be in trouble. Barry acknowledged that he did not want NYPD notified and that he wanted the matter quashed. Barry opined that it was his understanding of NYPD rules that once a supervisor, any supervisor from any department, was on the scene Respondent had fulfilled his notification obligation under the Patrol Guide.

Barry said that, after his return, he asked Respondent for his identification and Respondent refused. Respondent claimed that he was not asked for his identification by Barry or any other PAPD officer. Angela testified that Respondent was, in fact, asked for his identification by Barry.

What is undisputed about this interaction is that Respondent insisted on notifying NYPD and that, at this point, he called 911 for that purpose. Simultaneously, Barry asked his dispatcher to notify NYPD. An NYPD sergeant arrived at the scene and Respondent was ordered to the local precinct.

There is no extrinsic evidence from which one can determine which version of what happened that evening is the truth. There are, for instance, no video recordings. Nor are there any clearly impartial witnesses who can shed light on the specifics.

Respondent and his wife have an obvious interest in the outcome of this case. Barry, who might in other circumstances have been an impartial observer, in fact, became involved and lost his impartiality.

To understand how Barry ceased to become impartial and understand his involvement in the incident, it is necessary to assess his actions. Barry is a police officer but works for a department that has a defined jurisdiction. This court will take judicial notice of the fact that the public highway known as Seventh Avenue in New York County in the vicinity of 14 Street is not a Port Authority facility. Barry's testimony was that he was headed from one Port Authority facility to another. No claim was made that Barry's actions related to his Port Authority jurisdiction. There is no question that the police department with proper jurisdiction over this matter was the NYPD.

Barry's initial decision to stop and intervene seems to have been appropriate and authorized by Criminal Procedure Law § 140.10 (3) which allows him to take police action outside his jurisdiction where he believes a crime has been or is being committed. Although he did not frame the purpose of his stop in that fashion, his observations may have justified that initial action.

What occurred after that is puzzling. Rather than immediately notifying the local police authority, the NYPD, he took further police action. He acknowledged that he was aware that NYPD operates with two-officer car patrols while his department allows single-officer patrols. He acknowledged that car stops can be dangerous, yet he, the sole person in his car, exited the vehicle and proceeded to engage with the parties.

He went on to describe how his level of concern was enhanced when Respondent, a rather large man who appeared to be, and in fact was, armed approached him, yet he



continued to engage in a solo police intervention. When he did finally call for backup he called his own PAPD officers and not the local police.<sup>1</sup>

At some point in time, he determined that situation had been calmed down (Barry asserted that this took a while) and that no further police action need be taken. He left the scene in the hands of his subordinate officers and then, for whatever reason, returned. While there is disagreement on some of the specifics of what occurred when he returned, some facts are quite clear and agreed on.

For instance, there is no question that Barry was insistent that the matter should be quashed and not be reported to NYPD. He even exerted pressure on Respondent not to report to NYPD by telling him IAB would become involved and that reporting the matter would cause Respondent problems.

Respondent, for his part, was insistent that if a report was made by PAPD and his name was taken, the matter had to be reported to NYPD. It is also clear that Respondent, in fact, called 911 and notified NYPD.

While it is difficult to understand why Barry would not have involved NYPD from the outset and opted to handle the matter on his own, it is even more difficult to understand why he would resist a notification to NYPD after it was requested by a party to the action, particularly by a member of the service in this Department.<sup>2</sup>

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<sup>1</sup> The Court requested that the parties ascertain if there is a memorandum of understanding or any other agreement regarding how matters are to be handled between this Department and the Port Authority. The Advocate reported that there is no such formal agreement. He stated that a PAPD official advised him that their procedures allow their officers to take police action and call for their own backup officers. He noted that Seventh Avenue is a corridor regularly used for travel between the 33 Street PATH facility and the World Trade Center (see transcript of proceedings, March 29, 2012).

<sup>2</sup> I reject Barry's claim that he did not know specifically which department Respondent worked for. Even if he did not examine the shield and ID sufficiently when it was displayed at the outset of the incident, he had ample opportunity to do so before he left the scene the first time. Indeed, that was something he should have done to insure that the police ID was valid.

Some of it may come from his lack of knowledge regarding this Department's rules and practices. For instance, he testified that he did not believe that Respondent had to notify his department if a supervisor, such as himself, was on the scene, even though he was from another department. This is completely incorrect and, frankly, makes no sense as the whole purpose for such a rule is for the department that employs the officer to become aware of that officer's interaction with on-duty police and to determine if administrative or disciplinary action is appropriate. Respondent was correct in noting that he was obligated to report the matter to this Department.<sup>3</sup>

It is also clear that Barry became rather agitated at Respondent because he was annoyed that Respondent would not follow his advice not to report the matter. Indeed, much of Barry's testimony at this point had an "I told you so" attitude about it, given that when IAB was notified, Respondent was modified and is now facing Departmental charges.

Of course, Barry is not on trial here but his personal involvement in the situation makes him a participant and not an impartial observer. Moreover, he seems to have had a motive to present the facts in such a way as to make sure that his warnings to Respondent about what would happen if NYPD was notified came to be. It must be kept in mind in this regard that Barry wanted the matter to be dropped entirely. That would indicate that Respondent's conduct only became a problem after, and because of, Respondent's insistence that NYPD be notified.

With this as background, the Court will now attempt to analyze the facts and apply them to the charges. Specification No. 1 charges Respondent with "conduct prejudicial."

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<sup>3</sup> Barry also misstated the New York City speed limit as 25 miles per hour (it is 30 miles per hour - see website and safety campaign advertising of New York City Department of Transportation). He did acknowledge that he was unfamiliar with New York laws as he is a resident of New Jersey.



The specific acts he allegedly engaged in are set forth as follows: “[A]fter Person A a civilian, rode his bicycle in front of Police Officer Robert Vanness’ personal vehicle while traveling on 7<sup>th</sup> Avenue nearly striking Police Officer Robert Vanness’ vehicle, said Police Officer then sped his vehicle up and cut in front of Person A’s bicycle forcing him onto the sidewalk.”

There is no testimony that the bicyclist, Person A, almost struck Respondent’s car. Person A told Barry that he cut Respondent off. Barry did not witness this. Respondent testified that Person A was riding in the middle of the traffic lane, effectively blocking it. He said that is why he blew his horn at Person A. Angela described the bicycle as going from one side to the other in front of the vehicle but did not describe the act as cutting the vehicle off.

More significant is the allegation that, after being cut off, Respondent tried to force Person A onto the sidewalk. This allegation is based on Barry’s testimony. To come to some understanding of this allegation it is necessary to try to determine what happened with Respondent’s side view mirror.

Barry testified that he was driving several car lengths in front of Respondent and Person A when he saw the mirror incident. He said he saw it both in his own rear view mirror and by turning his head. This is a very difficult way to witness an event yet he was certain that the damage caused by Person A to Respondent’s vehicle was an accident. Respondent and his wife both claim they saw Person A’s actions directly and it was intentional.

There is really no good way of resolving this factual dispute but it seems clear that Barry’s version should not be accepted without question, both because of his possible

bias and because of the difficulty of observation. This is critical to the actual charge in the specification.

Barry testified that Respondent tried to force Person A into a bank of telephone booths which apparently was when Person A hit the curb and came off his bicycle. Respondent said that, after breaking his mirror, Person A tried to get away by jumping the sidewalk. His inability to mount the curb led him to come off the bicycle. In either version, it should be noted that Person A did not fall and was not hurt.

Again, there is insufficient evidence to establish which of these versions is true. Under the circumstances, the Department has failed to meet its burden of proof with regard to the factual allegations in Specification No. 1 and thus Respondent is found Not Guilty.

Specification No. 2 alleges in that Respondent failed to follow Barry's instructions in two respects; that he did not remain in the vehicle and that he "failed" to provide identification.

The issue of Respondent's alleged failure to remain in his vehicle also has two components. Respondent left the vehicle to retrieve the cover for his broken (or at least disassembled) side view mirror and he stepped out again when Person A was yelling at his wife.

With regard to Respondent's retrieving the cover for his mirror, Respondent claimed he told Barry he was going to do that. Retrieving the mirror part took him away from the area of confrontation; it certainly was not part of an escape attempt as his car and family were still on the scene. Further, Respondent's action prevented the cover from being damaged by traffic. Although the Advocate argued that this conduct was



included in the alleged misconduct, Barry did not seem troubled by it. Looking at the totality of the circumstances, Barry seems to have, at a minimum, tacitly consented to this. Therefore, as to that portion of the charge that relates to Respondent's action in recovering the cover for the mirror Respondent is found Not Guilty.

With regard to the allegation that Respondent stepped out of the vehicle because of the argument between his wife, Angela, and Person A, there is some factual uncertainty. Respondent and Angela both describe him as being in the area behind the door of his car. Barry did not address this in his testimony and only claimed that he (Barry) stepped between Person A and Angela. Consequently, it would seem that, while Respondent stepped out of the car, he remained near it.

Whatever the specifics, Respondent exited his vehicle after being told by a uniformed, on-duty police officer to remain in it. Respondent is found Guilty of this portion of the specification.

Lastly, this specification alleges that Respondent failed to provide his identification to Barry. This specification makes no sense as the very first thing Respondent did was to show his wallet with his identification card and shield. Barry claimed that he did not have time to study the identification at that moment and testified that he had "no idea" what department Respondent worked for. This is simply incredible.

The discussions Barry admits to having had, in particular his admonition that reporting the matter to NYPD would result in IAB being notified, indicate that he knew full well that Respondent worked for this Department. Moreover, Barry left the scene believing the incident was over. It is simply not reasonable to accept that he left the



scene without further examining the ID if he had not had an adequate opportunity to see it earlier.

At the very time Barry alleged that Respondent was refusing to identify himself, Respondent was, by all accounts, calling 911 for an NYPD response. Such a response would, of course, involve his providing identification and indeed Barry testified that he heard Respondent tell the operator that he was a member of the service.

Simply put, Respondent was not refusing to identify himself and indeed was prepared to do so. Respondent is found Not Guilty of that aspect of this Specification.

Specification No. 3 alleges that Respondent “engaged in a verbal dispute with Person A after being involved in a traffic incident.” This Court has repeatedly held that being involved in a verbal dispute, in and of itself, is not actionable misconduct. It is not alleged that Respondent threatened Person A or menaced Person A as part of this verbal dispute. The reason this dispute with Person A constituted misconduct was because it was in violation of Barry’s directive for Respondent to remain in his car. That issue was addressed in Specification No. 2. It is therefore recommended that this specification be dismissed.

#### PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on June 30, 1995. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of part of one specification, for failing to remain in his car after Barry told him to basically "sit down and shut up." There is no question that Barry was a uniformed, on-duty police officer and Respondent, who was off-duty and in civilian attire, had an obligation to comply.

There are, however, mitigating factors in this case. The first is that Respondent did initially comply and only got out of the car when Person A and his wife began arguing. Barry confirmed that there was such an argument. Respondent claimed that he got up because Barry was doing nothing to intervene. Further, while Respondent got out of his vehicle, it appears that he did not approach Person A.

Additionally, again based on Barry's testimony, Respondent, from the beginning of the incident, wanted NYPD notified. As stated earlier in this decision, there is no apparent reason why Barry was so insistent that the matter be quashed, nor is there any apparent reason why Barry refused to notify NYPD, indeed, insisted that NYPD not be notified (in fact, he made a notification only after Respondent, in his presence, called 911 and asked for an NYPD supervisor). Whatever the motivation, Barry handled the situation poorly and presented Respondent with a very difficult situation. All things considered Respondent handled that situation reasonably well.

If Respondent had followed Barry's advice, it is entirely possible that this matter would never have come to light within this Department. This Department was notified and became involved only because Respondent insisted on it. As a result, he was held at the precinct for many hours and, although no criminal charges were ever filed, he was placed on modified assignment.



Weighing all of these factors and Respondent's prior unblemished record this Court recommends that Respondent's penalty in this matter be a Reprimand.

Respectfully submitted,

  
Martin G. Karopkin  
Deputy Commissioner Trials



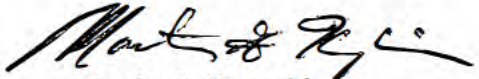


POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER ROBERT VANNESS  
TAX REGISTRY NO. 916835  
DISCIPLINARY CASE NO. 2010-2245

Respondent received an overall rating of 4.0 "Highly Competent" on his last three annual performance evaluations. He has been awarded three medals for Excellent Police Duty and one for Meritorious Police Duty. [REDACTED]  
[REDACTED]. Respondent has no prior formal disciplinary record.

For your consideration.

  
Martin G. Karopkin  
Deputy Commissioner Trials